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FRANKLIN CIRCUIT COURT
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**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CASE NO. 04-CI-588**

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**COMMONWEALTH OF KENTUCKY, ex rel.
The Executive Director of the Office of Financial
Institutions of the Commonwealth of Kentucky**

PLAINTIFF

v.

ORDER

**TARGET OIL & GAS CORPORATION
And
MICHAEL SMITH, PERSONALLY**

DEFENDANTS

This matter is before the Court on Plaintiff's Motion for Contempt. The Order of this Court dated May 10, 2007, ordered the Defendants to produce documents requested in the subpoena duces tecum by May 29, 2007. This Order was not complied with by Defendants.

On May 25, 2007, Defendants filed a Notice of Appeal. Defendants contend this was sufficient to remove the matter from this Court's jurisdiction. However, the Court's May 10, 2007 Order is clearly injunctive as it requires the Defendant to perform an act. *See* CR 65.01. Therefore, under CR 62.02, the judgment may only be stayed according to the provisions of CR 65.08.

CR 65.08 provides that a party may move the court to "grant, suspend or modify injunctive relief during the pendency of the appeal." Notwithstanding the filing of a notice of appeal, the Circuit Court retains jurisdiction to enforce an injunctive order unless a motion to suspend execution of the judgment has been granted. *Tabor v. Commonwealth*, 199 S.W.2d 613 (Ky. 1947)

Therefore, the Court ORDERS as follows:

1) The Defendants may, by June 27, 2007, file a motion, noticed for hearing, requesting a stay of this Court's May 10, 2007 Order as to the update period of the subject subpoena.

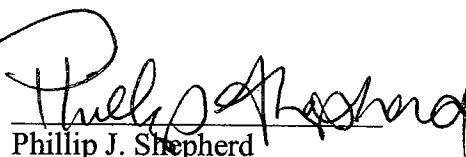
2) The Defendants shall, by June 27, 2007 at 9:00 a.m., turn over the documents which were request by the original subpoena that has now been affirmed by the appellate courts. The documents are to be produced to the Office of Financial Affairs, pursuant to the original subpoena.

3) In the event the Defendants fail to product the documents, the Plaintiffs shall notify the Court by filing a NOTICE of such failure to comply. Upon receipt of the filed NOTICE of the Plaintiff, the Clerk of the Franklin Circuit Court shall take the necessary steps to cause a Bench Warrant to be issued for the arrest of Michael Smith. Said Bench Warrant shall be issued by the Court and Michael Smith shall remain in custody until such time as this Court's orders of August 10, 2004 and May 10, 2007 regarding the original subpoena period have been complied with.

4) The Defendants shall, by July 5, 2007, produce the records responsive to the updated period of the subpoena and shall file such records under seal with this Court.

5) The Defendants are under a continuing duty to preserve any and all records that may be responsive to the original or updated subpoena.

So **ORDERED** this 20th day of June 2007


Phillip J. Shepherd
Judge, Franklin Circuit Court

04-CI-588/lea

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